

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SUSAN M. RUDOLPH,

Plaintiff,

v.

OPINION & ORDER

14-cv-240-jdp

TOSHIBA AMERICA MEDICAL SYSTEMS, INC.,
MINISTRY HEALTH CARE, and
MINISTRY ST. MICHAEL'S HOSPITAL,

Defendants.

In response to my previous orders, plaintiff Susan M. Rudolph has filed a proposed amended complaint. Dkt. 10 and Dkt. 11. As I explained in two earlier orders, it is unlikely that this federal court has subject matter jurisdiction over plaintiff's claims, which remain substantially unchanged from plaintiff's initial complaint. Twice now I have told plaintiff that her allegations do not establish federal question jurisdiction, and I have told plaintiff that she must amend her complaint to establish diversity jurisdiction (if she wishes to proceed in federal court) by alleging each party's citizenship. But plaintiff did not include any additional allegations concerning the parties' citizenship in her proposed amended complaint. Instead, plaintiff has chosen again to attempt to invoke federal question jurisdiction by relabeling her state law claims as federal causes of action. However, as I explain here, plaintiff still has not established that this court may exercise federal question jurisdiction over her claims, and I must dismiss her case for lack of subject matter jurisdiction.

The heart of plaintiff's complaint is that she was injured by a defective CT scanner manufactured by Toshiba America Medical Systems, Inc. Plaintiff invokes 42 U.S.C. § 1985(3), which provides a cause of action against persons who conspire to interfere with an

individual's civil rights. Plaintiff alleges that defendants conspired against her, were negligent, and possibly committed medical malpractice "to maximize their profits." Dkt. 10, at 11. But § 1985(3) is "not a source of substantive rights," meaning plaintiff must allege that defendants conspired to deprive her of equal protection under federal law. *Keri v. Bd. of Trs. of Purdue Univ.*, 458 F.3d 620, 642 (7th Cir. 2006), *overruled on other grounds by Hill v. Tangherlini*, 724 F.3d 965 (7th Cir. 2013); *see also Majeske v. Fraternal Order of Police, Local Lodge No. 7*, 94 F.3d 307, 311 (7th Cir. 1996) ("A plaintiff raising a claim under § 1985(3) must allege (1) the existence of a conspiracy, (2) a purpose of depriving a person or class of persons of equal protection of the laws, (3) an act in furtherance of the alleged conspiracy, and (4) an injury to person or property or a deprivation of a right or privilege granted to U.S. citizens."). Plaintiff summarily alleges that defendants conspired against her; however, she has not plausibly alleged that defendants conspired to deprive her of equal protection under the law.

Plaintiff's attempt to allege a civil rights violation to serve as the moving force behind defendants' conspiracy is a conclusory reference to discrimination; she does not say who discriminated against her or how what she experienced qualifies as discrimination. Plaintiff summarily states that "because of her pre-existing medical condition and the fact that she was an SSD and Medicare/Medicaid patient there was discrimination against her which prevented her from obtaining an attorney[.]" Dkt. 10, at 10. Somewhat along the same lines, plaintiff alleges that one of the defendants, Ministry St. Michael's Hospital, denied plaintiff "equal rights under the law" by refusing to participate in mediation. Plaintiff's allegations are entirely conclusory and are insufficient to establish federal question jurisdiction.

Plaintiff also alleges that defendants' conspiracy somehow subjected her to "involuntary servitude," in violation of the Thirteenth Amendment. Dkt. 10, at 11. However, plaintiff has not plausibly alleged a claim for relief under the Thirteenth Amendment. *See United States v. Kozminski*, 487 U.S. 931, 942 (1988) ("[T]he phrase 'involuntary servitude' was intended to extend to cover those forms of compulsory labor akin to African slavery which in practical operation would tend to produce like undesirable results." (internal citation and quotation omitted)); *John Roe I v. Bridgestone Corp.*, 492 F. Supp. 2d 988, 997 (S.D. Ind. 2007) ("Although the question does not arise frequently, federal district courts have consistently held that the Thirteenth Amendment itself does not provide a private right of action for damages." (citing cases)).

Plaintiff also attempts to allege a violation of her Eighth Amendment rights insofar as defendants' actions amounted to "cruel and unusual punishment." Dkt. 10, at 10. However, plaintiff's allegations do not demonstrate that she was "punished"—i.e., criminally punished within the meaning of the Eighth Amendment—or that deliberate indifference standards apply outside of the prison context. *See Farmer v. Brennan*, 511 U.S. 825, 835 (1994) (holding that inadequate *prison* medical care and a *prison official's* deliberate indifference to a prisoner's serious medical needs violates the Eighth Amendment's Cruel and Unusual Punishments Clause). Plaintiff cannot proceed on an Eighth Amendment claim.

Finally, as I have already explained in my previous orders, Dkt. 6 and Dkt. 9, plaintiff's reference to various federal regulations in connection with her state law claims are insufficient to create a federal question. Despite her attempts to recast her state law claims as federal issues, plaintiff's claims are state-law claims. Because the court lacks federal question jurisdiction over plaintiff's claims, and because plaintiff has made no attempt to establish

diversity jurisdiction despite the court's instructions, this court does not have subject matter jurisdiction over plaintiff's claims, and I will dismiss the case.

ORDER

IT IS ORDERED that:

1. Plaintiff Susan M. Rudolph's proposed amended complaint and supplement, Dkt. 10 and Dkt. 11, are DISMISSED for lack of subject matter jurisdiction.
2. The clerk of court is directed to enter judgment for defendants and close this case.

Entered January 19, 2016.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge